

ORIGINAL

Decision No. 77575

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACKERS' COLD STORAGE, INC., a corporation, for a Certificate of Public Convenience and Necessity to operate food warehouses in Fullerton, Anaheim and La Habra, California.

Application No. 47763

Edgar L. Fraser, for Packers' Cold Storage, Inc., applicant.
Wyman C. Knapp and Jack L. Dawson, for Pacific States Cold Storage Warehousemen's Association; and James Quintrall, for Los Angeles Warehousemen's Association, protestants.
John R. Laurie, Milton J. DeBarr, and George L. Hunt, for the Commission staff.

O P I N I O N

Applicant applied for a certificate of public convenience and necessity to authorize it to conduct operations as a warehouseman as defined in Section 239(b) of the Public Utilities Code and as a food warehouseman as defined in Section 2508 (now Section 239(c))^{1/} of the Public Utilities Code in the cities of La Habra, Fullerton and Anaheim. A protest was filed and after several days of hearing, Decision No. 71744, dated December 27, 1966, authorized the applicant to operate both as a public utility warehouseman and as a food warehouseman at the following locations:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
<u>Anaheim</u>	
1415 N. East Street	96,000
622 E. Cypress Street	22,567

^{1/} Food Warehouseman Act repealed 1969, Ch. 392.

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
<u>Fullerton</u>	
214 W. Santa Fe Street	58,410
301 S. Harbor Boulevard (114 W. Walnut)	22,283
200 W. Santa Fe Street	17,000
<u>La Habra</u>	
310 S. Euclid Street	86,667
300 S. Euclid Street	16,000

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code at each address shown.)

A petition for a rehearing was filed and the Commission scheduled further hearings to enable protestants to develop the following issues through cross-examination:

1. Applicant's current financial status and capacity in California, stated separately from operations in other states;
2. The extent that public convenience and necessity require applicant to provide cooler room or dry storage space;
3. The extent that applicant may be permitted to add to, extend, or otherwise increase its storage or warehouse floor space under Section 1051 of the Public Utilities Code; and,
4. The nature, scope, and reasonableness of rates, rate levels, rules and other tariff provisions under which applicant will conduct operations.

There were additional days of hearing and an Examiner's Proposed Report was filed on October 28, 1969. The Proposed Report recommended that Decision No. 71744 be affirmed and that the appendix attached to the decision be revised to include applicant's new facilities. Protestants filed Exceptions to the Report on December 12, 1969 and the applicant filed its Reply to the Exceptions on January 29, 1970.

Protestants raised the issues listed in the next paragraph. They contend that the applicant has failed to prove public convenience and necessity; does not have an adequate tariff on file, is proposing to charge noncompensatory and discriminatory rates and has been granted extensive warehouse operating authority in violation of certain provisions of the Public Utilities Code.

Issues

1. Have protestants been required to assume the burden of disproving applicant's case even though the latter has failed to prove public convenience and necessity?
2. Does Section 1051 of the Public Utilities Code limit each warehouse certificate to 50,000 square feet of total storage space regardless of the number of warehouses, or does the statute authorize 50,000 square feet of storage space at each warehouse location?
3. Does applicant have an adequate tariff on file?
4. Has the applicant been able to show a public need for cooler and dry storage space in its warehouses?
5. Has applicant failed to show that its proposed rates and regulations are reasonable in view of protestants' allegation that applicant's proposed rates are noncompensatory and discriminatory?
6. Does applicant have sufficient financial status and capacity in California and can its California operation be separated from its operation in other states?
7. Can applicant's 1966 certificate be amended to include the changes incorporated in applicant's "Third Amendment to the Application" filed on April 18, 1969?

Discussion and Additional Findings

The Commission hereby makes the following findings of fact that:

1. Applicant has proved public convenience and necessity and is entitled to the certificate granted by Decision No. 71744. Applicant presented a group of witnesses who represent large shippers. Several detailed the advantages of the service provided by the applicant. All of the public testimony favored the applicant.

2. The first sentence of Section 1051 provides that a certificate must be obtained to operate a public utility warehouse. The Commission can authorize the applicant to provide all the necessary warehouse space and locations that public convenience and necessity require. The statute does not restrict the warehouse space to be granted in the first certificate obtained. That is left to the discretion of the Commission. The statute then provides that the space in use and authorized by the initial certificate obtained cannot be "added to, extended, or otherwise increased" by more than 50,000 square feet without first obtaining a certificate from the Commission, which finds that the expansion is required by public convenience and necessity. The 50,000 square foot limitation does not apply to the applicant on the grant of its initial operating authority. A contrary holding would disregard the wording of the statute and would interpret a statute designed to protect the public for the exclusive benefit of the protestants.

3. Applicant filed its proposed tariff and the amendments thereto during this proceeding in response to a written motion filed by the staff on February 4, 1966. It was a "Motion To Direct The Applicant To Furnish Schedules Of Proposed Rates, Charges, Rules And Regulations" - and the applicant did as requested. The filing of the motion does not change the normal Commission procedure wherein the applicant is ordered to file its tariff in the decision which grants the certificate. The

staff cross-examined at great length on the tariff, and minor changes in wording and format suggested by the staff were adopted by the applicant. The fact that its rates or rules may differ from those set out in other warehouse tariffs does not show applicant's proposed tariff to be deficient.

4. The need for applicant's cooler and dry storage space is evident in the record. The testimony of a witness called prior to the first Commission decision identified several large cooler and dry storage accounts. There is nothing in subsequent testimony to refute this evidence.

5. Protestants maintain that applicant's proposed rates will be discriminatory to the protestants and will not provide adequate compensation to support the applicant's proposed operation. Protestants presented no evidence on this issue but they argue that the inadequacy of the proposed rates, rules and regulations are clearly indicated by the staff cross-examination of applicant's tariff witness. The staff examination revealed only minor discrepancies in the proposed tariff. The record shows that the applicant frequently made tariff changes on the advice of the staff and that applicant requested a conference with the staff if the latter considered applicant's proposed tariffs to be inadequate in any way. The staff did not file Exceptions to the Proposed Report of the Examiner and filed no Reply to the Exceptions filed by the protestants. The applicant's rates are reasonable and there is nothing in the record to indicate applicant's proposed rates are discriminatory or noncompensatory.

6. Applicant does have sufficient financial status and capacity in California. Applicant's out-of-state operations are relevant only if the California operation is affected thereby. Applicant provides

its customers with a pooling and distribution program which operates in several states. It is integral with the California operation only to the extent that goods are combined or pooled out of this State and shipped to the applicant at one of its warehouse locations as a unit. Applicant's function in other states will not affect its California operation. The last Commission order granting rehearing authorized protestants to develop the issue of applicant's financial status by cross-examination. The examination lasted five days and applicant placed various financial records in evidence as requested by protestants. Applicant is one of a complexity of corporations, which is not unusual in modern business practice. Accountants from the Commission staff who were present during the cross-examination were satisfied with applicant's explanations and records; no objections or recommendations were made.

7. During the period since applicant received its certificate in December, 1966, certain of its warehouses have been moved to other locations; two of the moves were due to the government condemning and taking over the prior premises. A third move resulted when applicant moved to larger and better quarters. The moves have changed the total dry, freezer and cooler space available and have increased applicant's total storage by approximately 17,000 square feet. It would be arbitrary and discriminatory to refuse to recognize the changes applicant was required to make during the years this matter has been on appeal. The record indicates that applicant's customers are mostly large multi-state corporations, which are still in the process of growth. Applicant could not continue to operate without continuously adjusting to its shipper requirements. We therefore find that the prior Commission decision in this matter should be affirmed and that public convenience and necessity require that an in lieu certificate be issued which includes applicant's latest warehouse locations, as noted on its pleading filed on April 18, 1969.

The Commission has considered the exceptions and reply filed herein and adopts as its own the findings of the Examiner in his proposed report along with the additional findings herein.

The Commission adopts as its own the conclusion made by the Examiner in his Proposed Report and further concludes that an in lieu certificate should be issued.

O R D E R

Based upon the evidence of record and upon the findings and conclusions herein,

IT IS ORDERED that:

1. Decision No. 71744, dated December 27, 1966, in Application No. 47763, is hereby affirmed.

2. A certificate of public convenience and necessity is granted to Packers' Cold Storage, Inc., a corporation, as a public utility warehouseman, as defined in Sections 239(b) and 239(c) of the Public Utilities Code, for the operation of storage or warehouse floor space as set forth in Appendix A attached hereto and made a part hereof.

3. Applicant shall comply with the regulations of the California Department of Public Health concerning hazardous or toxic commodities and shall include in its tariff a rule reading substantially as follows:

Hazardous or Toxic Commodities:

The warehouseman will not be required to accept for storage any commodity of a toxic nature which could contaminate other commodities in storage or be hazardous to the health of warehouse personnel. At warehouseman's option such hazardous or toxic commodities, when properly packaged and labeled to reduce contamination and health hazard to a minimum, may be accepted for storage in an area isolated from other commodities subject to contamination. Any additional services in the way of warehouse labor or excessive use of space arising from isolation of such commodities will be charged to the storage account.

4. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to file annual reports of its operations.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A.

5. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public

convenience and necessity granted by Decision No. 71744, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4(b) hereof.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of AUGUST, 1970.

[Signature] Chairman

[Signature]

[Signature]

[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Packers' Cold Storage, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a public utility warehouseman as defined in Sections 239(b) and 239(c) of the Public Utilities Code for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
<u>Anaheim</u>	
1415 S. Raymond Street	96,000
622 E. Cypress Street	22,567
<u>Fullerton</u>	
214 W. Santa Fe Street	58,410
301 S. Harbor Boulevard	22,283
310 E. Walnut	38,500
200 W. Santa Fe Street	12,000
<u>La Habra</u>	
310 S. Euclid Street	65,812
375 S. Cypress Street	20,350

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code at each address shown.)

This certificate is subject to the condition that at any building partially occupied by Packers' Cold Storage, Inc., and partially occupied by any other business or entity engaged in storing any product, the space used by Packers' shall be so physically separated from any space used by such other business or entity that access between the storage areas of Packers' and the storage areas of such other business or entity within the warehouse is impossible.

(End of Appendix A)

Issued by California Public Utilities Commission.

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